

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 13, 2007

ANTONIO LEONARD SWEATT v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 90-S-1362 Steve Dozier, Judge

No. M2006-00289-CCA-R3-PC - Filed May 9, 2007

The Appellant, Antonio Leonard Sweatt, proceeding *pro se*, appeals the Davidson County Criminal Court's summary dismissal of his petition requesting DNA analysis pursuant to the Post-Conviction DNA Analysis Act of 2001. Sweatt is currently serving an effective twenty-five-year sentence, which was imposed following his guilty pleas to two counts of aggravated rape. On appeal, he asserts that the trial court erred in dismissing his petition. After review, we find no error and affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which JERRY L. SMITH and J.C. McLIN, JJ., joined.

Antonio Leonard Sweatt, *Pro Se*, Nashville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; and Pamela Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Procedural History

On December 13, 1990, the Appellant pled guilty to two counts of aggravated rape of an eleven-year-old child and was sentenced, as a Range I, standard offender, to an effective sentence of twenty-five years in the Department of Correction. *Antonio L. Sweatt v. TN Board of Paroles, et al.*, No. M1999-02265-COA-R3-CV (Tenn. Ct. App. at Nashville, Oct. 12, 2000). A plethora of litigation, evidencing the Appellant's familiarity with the legal system, followed. *See Antonio Sweatt v. TN Dept. Of Correction, et al.*, 248 F.3d 1152 (6th Cir. Feb. 6, 2001) (affirming the district court's dismissal of a civil rights action which asserted an eighth amendment violation based upon state prison officials' failure to properly treat chronic sinusitis); *Antonio Sweatt v. Donald Campbell, et al.*, No. 99-6146 (6th Cir. May 9, 2000) (affirming dismissal of civil rights claim which asserted a

violation based upon prison officials improperly locking down the area of the prison where he was housed); *Antonio L. Sweatt v. Tenn. Dept. Of Correction*, No. M2001-01229-COA-R3-CV (Tenn. Ct. App. at Nashville, Aug. 28, 2002) (affirming dismissal of petition for writ of certiorari, which was filed after exhausting all legal remedies for a disciplinary infraction report, by chancery court as the Appellant had failed to pay unpaid court costs); *Antonio Sweatt v. Tenn. Dept. Of Correction*, No. M2000-02983-COA-R3-CV (Tenn. Ct. App. at Nashville, May 2, 2002) (affirming dismissal of civil rights claim as frivolous as the same claim was pending in federal court); *Antonio L. Sweatt v. Billy Compton, et al.*, No. W2001-00002-COA-R3-CV (Tenn. Ct. App. at Jackson, Sept. 6, 2001) (affirming summary judgment in case where the Appellant accused the prison warden, prison employees, and the prison physicians of alleged federal constitutional violations, negligence, and medical malpractice); *Antonio L. Sweatt v. Fred Raney, et al.*, No. W1999-02458-COA-R3-CV (Tenn. Ct. App. at Jackson, June 14, 2000) (affirming dismissal of civil rights suit alleging that prison transfer was unconstitutional and that prison officials were deliberately indifferent to medical condition); *Antonio Sweatt v. Donal Campbell, et al.*, No. 02A01-9808-CV-00227 (Tenn. Ct. App. at Jackson, Feb. 25, 1999) (affirming dismissal of civil rights action alleging that employees of the corrections department deprived him of his right of access to the court and his right to petition the government, conspired to interfere with his civil rights, and neglected to prevent conspiracies); *Antonio Sweatt v. Billy Compton, et al.*, No. 02A01-9710-CV-00252 (Tenn. Ct. App. at Jackson, Feb. 2, 1999) (reversing grant of summary judgment in lawsuit against prison officials alleging federal constitutional violations and medical malpractice); *Antonio Sweatt v. Robert Conley, Warden et al.*, No. 01-A-01-9706-CH-00247 (Tenn. Ct. App. at Nashville, Dec. 5, 1997) (affirming dismissal of complaint asserting civil rights violation based upon prison officials confining the Appellant to a cell with a smoker despite his chronic sinusitis); *Antonio L. Sweatt v. State*, No. M2002-02391-CCA-R3-CO (Tenn. Crim. App. at Nashville, Sept. 30, 2003) (affirming trial court's dismissal of petitions for writ of error coram nobis and for DNA analysis pursuant to the DNA Post-Conviction Analysis Act); *Antonio Sweatt v. Jack Morgan, Warden*, No. M1999-00979-CCA-R3-PC (Tenn. Crim. App. at Nashville, May 19, 2000) (affirming dismissal of petition for writ of habeas corpus challenging convictions based upon the validity of the indictments); *Antonio L. Sweatt v. State*, No. M1999-01300-CCA-R3-PC (Tenn. Crim. App. at Nashville, Mar. 6, 2000) (affirming summary dismissal of habeas corpus petition alleging an involuntary guilty plea and an expired sentence); *Antonio L. Sweatt v. State*, C.C.A. No. 01C01-9811-CR-00454 (Tenn. Crim. App. at Nashville, July 19, 1999) (affirming trial court's denial of post-conviction petition as time-barred); *Antonio Sweatt v. State*, C.C.A. No. 02C01-9805-CC-00132 (Tenn. Crim. App. at Jackson, Sept. 25, 1998) (affirming dismissal of petition for writ of habeas corpus alleging an involuntary guilty plea based upon misrepresentation).

In 2002, the Appellant filed his first petition requesting DNA analysis. In September 2003, a panel of this court affirmed a trial court's summary dismissal of the Appellant's "Petitions for Writ of Error Coram Nobis and for DNA analysis pursuant to the 'Post-Conviction DNA Analysis Act of 2001[.]'" *Antonio L. Sweatt*, No. M2002-02391-CCA-R3-CO. The following information from that appeal is pertinent to the instant appeal:

. . . Approximately six months prior to the guilty pleas, a sample of the Appellant's DNA was tested along with a sample from "the victim The results were "inconclusive." Appellant asserts in his pleadings that this result proves his innocence of the crimes to which he pled guilty. In his brief on appeal, he submits that the DNA test results were "negative."

. . . .

Appellant specifically appeals from the trial court's August 27, 2002, order, which provides as follows:

. . . .

The record is clear the evidence sought to be analyzed by the [Appellant] was previously tested on June 15, 1990, and the results made known prior to the [Appellant] knowingly and voluntarily entering his plea. If the results of the prior rape kit analysis were inconclusive, the [Appellant] should not have entered his plea and demanded another examination. Further, the state's response to discovery indicates that [the Appellant] was positively identified by the victim minutes after the alleged offense occurred.

. . .

Id. In affirming the dismissal on appeal, a panel of this court concluded that "DNA analysis had already been done prior to his guilty pleas. He made no allegation that a new type of analysis could resolve an issue not resolved by the previous analysis." *Id.*

On August 12, 2005, the Appellant filed a second petition for DNA analysis, the subject of the instant appeal. In the petition, the Appellant acknowledges that DNA analysis was previously conducted on the biological specimens taken from both himself and the victim. However, he asserts that he was wrongfully convicted of both counts of aggravated rape, that he was coerced into pleading guilty, and that the State withheld the results of DNA testing from the rape kit, which he claimed "definitely excluded" him as the perpetrator. The trial court summarily dismissed the petition on January 6, 2006, with this appeal following.

Analysis

On appeal, the Appellant has raised two issues for our review. First, he challenges the trial court's summary dismissal of his petition requesting DNA analysis, arguing it was error to dismiss the petition because: (1) DNA analysis would prove his innocence and clear him of both aggravated rape charges; (2) the State withheld/concealed exculpatory biological evidence, specifically the results of the DNA rape kits performed on June 13, 1990, which were "negative"; (3) the State failed to respond to the Appellant's petition despite the court's order on August 25, 2005, which gave the

State thirty days to do so; and (4) the Appellant stated a meritorious claim but was never appointed counsel or allowed to amend his petition. Second, the Appellant poses the question:

“Is this issue a criminal act, an act of obstruction of justice or an act of corruption, that violated the [Appellant’s] United States Constitutional rights from a malicious act from the Clerk Erica Peters duties of the Court; when the Honorable Steve R. Dozier, Judge allowed Clerk Peters to place a false court date (December 16, 2005) into the Court’s computer information system for a hearing upon the [Appellant’s] pro se Petition for Post-Conviction DNA Analysis Act of 2001, due to her court docket book being inadequate for court hearing.”

The State maintains that the petition was properly denied because the Appellant has failed to meet the mandatory criteria required for DNA analysis and because his entitlement to DNA testing is barred by the law of the case doctrine.

The Post-Conviction DNA Analysis Act of 2001 provides, in pertinent part, that “a person convicted of and sentenced for the commission of . . . aggravated rape . . . may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.” T.C.A. § 40-30-303 (2006). After notice to the prosecution and an opportunity to respond, the Act requires a court to order DNA analysis if the court finds that:

(1) [a] reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;

(2) the evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) the evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

T.C.A. § 40-30-304 (2006). There is no statute of limitations applicable under this Act. T.C.A. § 40-30-303.

“The failure to meet any of the qualifying criteria is, of course, fatal to the action.” *William D. Buford v. State*, No. M2002-02180-CCA-R3-PC (Tenn. Crim. App. at Nashville, Apr. 24, 2003).

The trial court is under no obligation to conduct a hearing or to order DNA analysis of evidence unless it finds that each of the four statutory requirements have been satisfied. Thus, a finding that any one of the criteria is not met will preclude relief under the Act.

In this case, the trial court summarily dismissed the Appellant's petition. No written order of dismissal is contained in the record before us, only the minutes of the court which state that "after due consideration and all the evidence introduced, said petition is denied without a hearing." Following review, we conclude that summary dismissal was proper.

Initially, we are constrained to note that the Appellant has asserted that the trial court erred in dismissing his petition for multiple reasons, including that the State failed to supply him with the DNA test results, that the State failed to respond to the Appellant's petition, and that he was not appointed counsel. These issues, in and of themselves, are not cognizable in a petition for DNA analysis. Irrespective of the fact that the issues are not cognizable, the Appellant has failed to establish these claims.¹ Even had the Appellant been able to substantiate these omissions, he still bears the burden of establishing the four statutory requirements of Tennessee Code Annotated section 40-30-304. Clearly, in this case, the Appellant has not met that burden.

The Appellant himself admits that DNA analysis has previously been conducted on both himself and the victim in June 1990. However, he argues he did not receive the results, which he claims unequivocally excluded him as the perpetrator, prior to his guilty plea. This court, in affirming the dismissal of the Appellant's prior petition for DNA analysis, found that not only were the results given to the Appellant six months prior to entry of his pleas, they also were "inconclusive." Thus, the Appellant was not excluded as the perpetrator. Moreover, the Appellant makes no allegation that any new type of forensic analysis could resolve issues not resolved by the previous analysis. Thus, the Appellant has failed to establish the third statutory requirement. As noted by the State, the law of the case doctrine, is also applicable in this case, as a separate panel of this court has previously found that the Appellant failed to meet the statutory criteria for DNA analysis, specifically "that the evidence was never previously subjected to DNA analysis." Thus, review reveals that summary dismissal of the petition was proper.

CONCLUSION

Based upon the foregoing, the trial court's summary dismissal of the Appellant's petition for DNA analysis is affirmed.

DAVID G. HAYES, JUDGE

¹We are also constrained to note that the Appellant's issue regarding the court clerk's action in rescheduling his hearing is also not cognizable for relief in this proceeding. Moreover, the Appellant has failed to establish the substance of his claim on the record before us, instead urging our procurement of tape recordings of calls from prison officials. It is the Appellant's responsibility to prepare an accurate record for review. *See* Tenn. R. App. P. 24(b).